

Appeal from decision of the Montana State Office, Bureau of Land Management, dismissing protest with respect to oil and gas lease M-48642.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

Where, for purposes of reselection, it is necessary for an applicant whose original oil and gas lease application was erroneously omitted from a previous drawing, to file a new application such newly prepared application is not defective because it is not dated within the original filing period.

APPEARANCES: J. Linda Tomson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated November 4, 1981, of the Montana State Office, Bureau of Land Management (BLM), dismissing appellant's protest to the issuance of oil and gas lease M-48642 to Oxy Petroleum, Inc. (Oxy).

Appellant's simultaneous oil and gas lease application for parcel MT 52 was drawn with first priority in the July 1980 simultaneous oil and gas lease drawing. Oxy also filed for that parcel in the July 1980 drawing, but BLM returned Oxy's application because it found Oxy's remittance unacceptable. In Oxy Petroleum, Inc., 52 IBLA 239 (1981), 1/ the Board determined that BLM

1/ Petition for reconsideration denied, Mar. 23, 1981.

erred in refusing Oxy's remittance. We remanded the case for reselection pursuant to 43 CFR 3112.3-2. That regulation provides:

§ 3112.3-2 Reselection procedures.

If a properly filed application is omitted from the selection process, a new selection shall be held. An omitted application may not be withdrawn by the applicant. The new selection shall consist of the omitted application(s) and the number of blank applications equal to the number of applications which were included in the first selection. Such selection shall be conducted in the same manner as the original selection. If the omitted application is not selected first, second or third priority in the new selection, the priority established in the original selection shall stand. However, if an omitted application is selected in the first, second or third priority, it shall displace the application selected with the same and lower priorities in the original selection. No applications chosen in the first selection shall be eliminated from priority as a result of the selection of an omitted application in the reselection. The number of priorities shall be increased as necessary.

On August 27, 1981, a redrawing was held and the application of Oxy was first drawn for parcel MT 52. Appellant Tomson's application was reduced to second priority. In its decision dismissing Tomson's protest, BLM states that it requested Oxy to resubmit the original application for the redrawing, but that it was Oxy's policy not to retain it applications. For this reason, Oxy filed a new application which it dated August 3, 1981.

Appellant's protest and appeal contend that since Oxy's application was dated August 3, 1981, it was not qualified to win a parcel offered in the July 1980 filing period. Appellant adverts to 43 CFR 3112.2-1(c) which states that "[t]he date shall reflect that the application was signed within the filing period."

[1] BLM properly dismissed the protest. Oxy had not retained the original application so in order to exercise its right to participate in the redrawing it had to submit a new application. 43 CFR 3112.2-1(c) requires that an application be dated at the time of signing, thus it was not appropriate for Oxy to date the newly prepared application within the original filing period. The original drawing was determined to have been ineffective, ipso facto, because Oxy was a qualified applicant omitted from that drawing. Consequently, no dispositive purpose could have been served by backdating the new application to the July 1980 filing period. The regulation contains no provision precluding reselection where the original, properly filed applications are no longer available. The purpose of reselection is to afford an applicant an opportunity that was improperly denied in the earlier drawing.

Therefore, according to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

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